

SUZANNE WALSH

IBLA 84-404

Decided October 25, 1984

Appeal from decision of the New Mexico State Office, Bureau of Land Management, rejecting high bid for competitive oil and gas lease. NM 58555 (OK).

Set aside and remanded.

1. Oil and Gas Leases: Competitive Leases -- Oil and Gas Leases:
Discretion to Lease

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to determine the correctness of the decision if disputed on appeal.

2. Oil and Gas Leases: Competitive Leases -- Oil and Gas Leases:
Discretion to Lease

Where a competitive oil and gas lease high bid is not clearly spurious or unreasonable on its face and the record fails to disclose a sufficient factual basis for the conclusion that the bid is inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bid.

APPEARANCES: Suzanne Walsh, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Suzanne Walsh has appealed from a March 19, 1984, decision issued by the New Mexico State Office, Bureau of Land Management (BLM), rejecting her high bid submitted for competitive oil and gas lease NM 58555 (OK). The decision informed appellant that her bid of \$505 for parcel 59, a 40-acre tract, was rejected because it was below the presale tract valuation.

The case file does not contain a presale value for the parcel. It contains only a memorandum dated March 7, 1984, from the Deputy State Director, Mineral Resources, to the Deputy State Director, Operations, advising that the Branch of Economic Evaluations recommends that the high bid for

parcel 59 be rejected. The basis for the recommendation did not accompany the memorandum.

To support her position that her bid is adequate, appellant offered evidence of 27 production leases for oil and gas in varying sizes granted for 3 years for \$10 plus other consideration. The leases cover land within sec. 18, T. 4 N., R. 22 E., wherein parcel 59 is situated. Appellant also argues that her bid is reasonable in light of high production costs and the low percentage of income a lessee can expect to realize from a producing well within sec. 18, as evidenced by the 27 leases. She further states that there is a dry hole within 2,000 feet of parcel 59, and other dry holes are found within the surrounding sections. BLM filed no response to appellant's statement of reasons.

[1, 2] The Secretary of the Interior had discretionary authority to reject a high bid for a competitive oil and gas lease as inadequate. 30 U.S.C. § 226(b) (1982); 43 CFR 3120.3-1. E.g., Viking Resources Corp., 80 IBLA 245 (1984); Edward L. Johnson, 73 IBLA 253 (1983). This Board has consistently upheld that authority, so long as there is a rational basis for the conclusion that the highest bid does not represent a fair market value for the parcel. E.g., Viking Resources Corp., *supra* at 246; Ambra Oil & Gas Co., 75 IBLA 11, 14 (1983); Glen M. Hedge, 73 IBLA 377, 378-79 (1983); Edward L. Johnson, *supra* at 254-55. Departmental policy in the administration of its competitive leasing program is to seek the return of fair market value for the grant of leases and the Secretary reserves the right to reject a bid which will not provide a fair return. Viking Resources Corp., *supra* at 246; Glen M. Hedge, *supra* at 379; Coquina Oil Corp., 29 IBLA 310, 311 (1977).

The Department is entitled to rely on the reasoned analysis of its technical experts in matters involving geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases. Viking Resources Corp., *supra* at 247; L. B. Blake, 67 IBLA 103 (1982). However, when BLM relies on that analysis in rejecting a bid as inadequate, it must ensure that a reasoned explanation is provided for the record to support the decision. E.g., TXO Production Corp., 73 IBLA 258, 261 (1983); Edward L. Johnson, *supra* at 255; Southern Union Exploration Co., 41 IBLA 81, 83 (1979). Otherwise, if the bid is not clearly spurious or unreasonable on its face, the Board has consistently held that the decision must be set aside and the case remanded for compilation of a more complete record and readjudication of the acceptability of the bid. E.g., Ambra Oil & Gas Co., *supra* at 14; TXO Production Corp., *supra* at 261, Edward L. Johnson, *supra* at 255. In Southern Union Exploration Co., 51 IBLA 89, 92 (1980), this Board stated:

[T]he appellant is entitled to a reasoned and factual explanation for the rejection of its bid. Appellant must be given some basis for understanding and accepting the rejection or alternatively appealing and disputing it before this Board. The explanation provided must be a part of the public record and must be adequate so that this Board can determine its correctness if disputed on appeal. Steven and Mary J. Lutz, 39 IBLA 386 (1979); Basil W. Reagel, 34 IBLA 29 (1978); Yates Petroleum Corp., 32 IBLA 196 (1977); Frances J. Richmond, 24 IBLA 303 (1976); Arkla Exploration Co., 22 IBLA 92 (1975).

We are unable to determine the correctness of the BLM decision on the basis of the present record. The record is deficient in that it does not reveal the presale evaluation of the parcel. The record does not provide appellant an adequate basis for understanding and accepting the bid rejection or for disputing it before this Board. There is, indeed, no factual data in the record. See Davis & Smith, Ltd., 73 IBLA 22, 24 (1983); Southern Union Exploration Co., *supra*. The record does not contain any calculations, explanations, or analyses to support BLM's conclusion that appellant's bid is inadequate. In order for this Board to find that BLM had a rational basis for its conclusion, we must know that basis. A plethora of Board decisions have reiterated the requirements necessary to document a decision to reject a high bid for an oil and gas lease at competitive sale. See Viking Resources Corp., 77 IBLA 57, 61-62 (1983) (Burski, A.J., concurring).

This Board will not substitute its judgment for that of BLM in determining the fair market value of the parcel for which appellant applied, but rather the Board will require sufficient facts and analysis to ensure that a rational basis for the determination is present. E.g., Viking Resources Corp., 77 IBLA at 59; TXO Production Corp., *supra* at 261; Davis & Smith, Ltd., *supra* at 25. We recognize that ultimately appellant must not merely show that the Government's estimate did not constitute fair market value, but she must also affirmatively show that her bid represented fair market value. Kevin J. Bliss, 82 IBLA 31 (1984). But as we noted in Larry White, 81 IBLA 19 (1984), the burden of justifying her bid does not shift to appellant "in the absence of sufficient documentation of the Government's estimate such as would establish its prima facie correctness." Id. at 22 n.2. See also R. T. Nakaoka, 81 IBLA 197, 200 (1984). Such a prima facie case cannot be made in the absence of a disclosure of what the presale evaluation was. In readjudicating the bid, BLM should consider the arguments presented by appellant's statement of reasons. If her bid is rejected again, BLM shall set forth the reasons for doing so, including the presale evaluation, so that these reasons may be addressed by appellant and considered by the Board in the event of an appeal.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and remanded for further consideration consistent with this decision.

Gail M. Frazier
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Franklin D. Arness
Administrative Judge